

S.B. CIVIL WRIT PETITION NO.4418/2004

Sharda Devi vs. Civil Judge (JD), Churu & anr.

Date : 15.12.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr. Chaitanya Gahlot, for the petitioner.

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Heard learned counsel for the petitioner. Nobody has appeared for the respondent despite service.

The petitioner is aggrieved against the order dated 28.5.2004 by which the trial court allowed the application filed by the plaintiff under Section 65 of the Evidence Act and permitted production of printed copy of a will alleged to have been executed by one Hanuta Ram.

It appears from the facts of the case that the plaintiff sought production of the original will through court upon which the Court issued summons for production of the original will to third parties but despite several efforts, the will was not produced. Upon this, the plaintiff submitted an application for proving the will by secondary evidence. The plaintiff produced a photostat copy taken from one Smarika and prayed that the same may be permitted to be accepted as secondary evidence. The copy is a printed document and is neither a copy prepared by the same process by which the original will was prepared nor it is the photostat copy of the will. The alleged copy of the will is neither certified nor the attested copy of the original will. Apart from it, the defendant's case is that

no such will was ever executed.

It appears that the trial court without holding an enquiry about existence of the original document, permitted the plaintiff to produce secondary evidence. It is further relevant to mention here that according to the plaintiff himself, the original document is in existence and could have been produced by the process of the court but the trial court under an impression that the trial court can only issue notice for production of document, allowed the application of the plaintiff ignoring the fact that the Court could have employed other provisions of law for seeking attendance of the witness with the document.

In view of the above, this writ petition is allowed, the impugned order dated 28.5.2004 is set aside. The trial court is directed to take effective steps for summoning of the original will from the concerned party and in case, they failed to produce the original will, then the trial court may hold an enquiry about existence of the original will and thereafter may consider the application of the plaintiff for production of document in secondary evidence. The trial court is also directed to proceed with the suit expeditiously.

A copy of this order be sent to the trial court forthwith.

(PRAKASH TATIA), J.

S.Phophaliya